

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
SHAWN C. MCGUIRE	:	Bankruptcy No.: 17-14056-amc
	:	
Debtor.	:	Chapter 13

Shawn C. McGuire	:	
26 W. Roland Road	:	
Brookhaven, PA 19015	:	
Plaintiff	:	
v.	:	
	:	
HSBC Bank USA, National Association	:	
452 5th Avenue	:	
New York, NY 10018	:	
Defendant.	:	AP No.

**COMPLAINT TO DETERMINE VALIDITY OF LIEN HELD
BY HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
HOLDERS OF THE ACE SECURITIES CORP. HOME EQUITY LOAN TRUST,
ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2006-CW1**

I. Introduction

1. The instant complaint is filed by the Debtor-Plaintiff (hereinafter referred to as “Plaintiff”) Shawn C. McGuire pursuant to Bankruptcy Rule 7001 to determine the extent and validity of any lien asserted by Defendant, HSBC Bank USA, National Association, As Trustee for the Holders of Ace Securities Corp. Home Equity Loan rust Asset Backed Pass-Through Certificate Series 2006-CW1 (hereinafter referred to as “Defendant”) and pursuant to 11 U.S.C. § 506 to determine the extent to which Defendant pursuant to a second mortgage on the property more fully described below may file a secured claim and the extent to which it is an unsecured claim; to declare that any such claim that may be filed by the Defendant pursuant to the aforesaid mortgage is unsecured, per 11 U.S.C. § 506, and praying that the Honorable Court enter an order, directing the Defendant to void and/or vacate the second mortgage held by the Defendant

upon the property of the Plaintiff, and to have such voidance or vacation recorded with the Recorder of Deeds, or as a satisfaction of mortgage.

II. Jurisdiction

2. Debtor-Plaintiff, Shawn C. McGuire, by and through their counsel, Brad J. Sadek, Esquire, of Sadek Law Offices, filed the present chapter 13 case on June 9, 2017 (the “Chapter 13 Case”). This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157.

III. Parties

3. The Plaintiff is Shawn C. McGuire, a natural person, who resides at 26 West Roland Road, Brookhaven, PA 19015.

4. The Defendant is HSBC Bank USA, National Association, having a primary office to conduct business at 452 5th Avenue, New York, NY 10018.

5. The standing chapter 13 trustee in the Chapter 13 Case is Kenneth E. West, Esquire.

IV. Allegations of Fact

6. The Plaintiff purchased real property located at 26 West Roland Road, Brookhaven, PA 19015 (the “Property”) on or about March 15, 2006, by way of first mortgage held by HSBC Bank, US National Association and serviced by Nationstar Mortgage, LLC (the “First Mortgage”).

7. The subject second mortgage on the property was granted in favor of the Defendant, on or about March 15, 2006, in the original amount of \$31,980.00 (the “Second Mortgage”).

8. As of October 31, 2023, the First Mortgage had a total balance due and owing in the amount of \$222,036.52 in accordance with Amended Proof of Claim numbered 8-3 filed in the Chapter 13 Case (the “First Mortgage”). See Proof of Claim 8-3 incorporated herein and marked as **“Exhibit A.”**

9. As of November 18, 2013, the Second Mortgage, through Defendant, had a current balance due and owing in the amount of \$53,266.89 in accordance with Proof of Claim numbered 8-1 filed in the Plaintiff-Debtor’s prior bankruptcy case, Case No. 14-00068-BIF (the “Prior Case”). See Proof of Claim 8-1 from the Prior Case incorporated herein and marked as **“Exhibit B.”**

10. In accordance with Schedule “A” filed in the Chapter 13 Case, the value of the Property is \$124,234.00.

11. Based on the foregoing, Plaintiff avers that the property is worth less than the payoff amount of the First Mortgage.

12. Therefore, the Second Mortgage, held by the Defendant, is wholly unsecured.

13. Pursuant to 11 U.S.C. § 506, Plaintiff asserts that the debt or obligation owed by the Plaintiff to the Defendant by virtue of the Second Mortgage upon Debtor’s real property should be reclassified by this Honorable Court as completely unsecured and any lien held by the Defendant against the property in question should be declared null and void.

WHEREFORE, Plaintiff, by and through their counsel Brad J. Sadek, Esquire of Sadek Law Offices, respectfully requests that this Honorable Court enter an Order in favor of the Plaintiff and against Defendant, reclassifying any claim filed by the

Defendant based upon the aforementioned Second Mortgage upon the premises, from secured to unsecured, striking or otherwise modifying any such Proof of Claim that is filed by the Defendant to show that the debt in question is wholly unsecured; and

ORDERING the Defendant to void or otherwise vacate the second mortgage on the premises of 26 West Roland Road, Brookhaven, PA 19015, and have such voidance or vacation recorded with the Recorder of Deeds, or in the alternative, mark said mortgage as “satisfied” on the records of the Recorder of Deeds within thirty (30) days of the entry of the Order of Discharge of this Honorable Court, and to deliver same to counsel for Plaintiff, at no cost or charge for such cancellation and/or delivery; AND

Granting such relief as the Court may determine to be proper and just.

Respectfully submitted,

SADEK LAW OFFICES

Dated: December 29, 2023

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